

CITY OF MUSKEGON
PLANNING COMMISSION
REGULAR MEETING

DATE OF MEETING: Thursday, October 16, 2014
TIME OF MEETING: 4:00 p.m.
PLACE OF MEETING: Commission Chambers, First Floor, Muskegon City Hall

AGENDA

- I. Roll Call
- II. Approval of Minutes from the regular meeting of September 11, 2014.
- III. Public Hearings
- IV. New Business
 - A. **Hearing, Case 2014-12:** Staff-initiated request to amend the zoning ordinance to allow medical marijuana dispensaries in B-2 (Convenience and Comparison Business), B-3 (Central Business), B-4 (General Business), B-5 (Governmental Business), MC (Medical Care), I-1 (Light Industrial) and I-2 (General Industrial) districts.
- V. Old Business
 - A. **Case 2014-11:** Staff initiated request to amend Section 2313 (Community Gardens) of the zoning ordinance to replace it with an urban farming ordinance.
- VI. Other
- VII. Adjourn

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CITY COMMISSION AND ANY OF ITS COMMITTEES OR SUBCOMMITTEES

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Ann Marie Cummings, City Clerk
933 Terrace Street
Muskegon, MI 49440
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CITY OF MUSKEGON
PLANNING COMMISSION
REGULAR MEETING
MINUTES

September 11, 2014

Chairman T. Michalski called the meeting to order at 4:01 p.m. and roll was taken.

MEMBERS PRESENT: T. Michalski, B. Larson, L. Spataro, B. Mazade, S. Gawron, S. Wisneski, F. Peterson

MEMBERS ABSENT: J. Doyle, excused; B. Smith

STAFF PRESENT: M. Franzak, C. Brubaker-Clarke, D. Renkenberger

OTHERS PRESENT: M. Landis, Parmenter-O'Toole; M. Bear, 529 Houston Ave; C. Burnaw, 1475 Westwood Dr; C. McGuigan, Community Foundation for Muskegon County; Marcia Hovey-Wright, Muskegon resident and State Representative; J. Elden Brady, 1336 Spring St.; C. Price, 1351 W. Summit; C. Yothers, 1239 Terrace; V. Riegler, 1187 Washington, for Unity Church of Muskegon; R. Hesselink, 1187 Woodcrest; D. Warren, 126 Washington, Grand Haven MI

APPROVAL OF MINUTES

A motion that the minutes of the regular meeting of July 10, 2014 be approved, was made by S. Gawron, supported by F. Peterson and unanimously approved.

PUBLIC HEARINGS

Hearing, Case 2014-11: Staff-initiated request to amend Section 2313 (Community Gardens) of the zoning ordinance to replace it with an urban farming ordinance. C. Brubaker-Clarke provided background information on the history of community gardens and urban farming in the City of Muskegon. She stated that City staff and the City Attorney had spoken with many experts in this area to come up with the proposed ordinances presented to the Commission for their recommendation.

M. Franzak presented the staff report. There are some community garden organizations in the City who are working with schools and other non-profit organizations to donate/sell vegetables for their lunch programs. The current community gardens ordinance does not allow for the sale/donation of crops. This new ordinance will better define what can be sold/donated. It will also better define what types of structures will be allowed on site and defines the setback requirements. The Planning Commission is being asked to recommend one of the two versions to the City Commission for adoption: One version will allow commercial sales and one version will prohibit commercial sales. The version that prohibits commercial sales would still allow urban farms to accept donations from individuals or other non-profit organizations, as long as they are used to further sustain the operation and support the mission of the urban farm. City attorney Michelle Landis was present at the meeting to discuss the details of the Michigan Right to Farm Act, Generally Accepted Agricultural and Management Practices (GAAMPs), and other aspects that may come into play under the new ordinance. Planning Commissioners were provided with the current Community Gardens ordinance and two versions of the proposed Community Gardens, Urban Farms and

Private Farms ordinance (one allowing commercial sales and one prohibiting commercial sales).

M. Franzak distributed to board members written comments he had received: Love Community Garden's (LCG) letter indicated that they are not satisfied with several requirements of either version of the ordinance, and they submitted a proposed ordinance of their own; The Community Foundation and HEALTHY Muskegon team submitted a letter in support of an urban farming ordinance that permitted the sale of produce. M. Franzak stated that setbacks were an important consideration in urban farming, in order to keep tall crops from blocking the view of the street, and for safety reasons. B. Mazade asked how the ordinance proposed by LCG differed from the City's proposed ordinances. M. Franzak stated that the main differences had to do with setbacks and structures. B. Larson asked who would enforce the ordinance. M. Franzak stated that Planning staff would, similar to the way community gardens are currently handled. B. Larson asked if the ordinance would encourage or discourage farming. M. Franzak stated that the ordinance would merely lay out requirements to be followed for urban farms.

M. Landis stated that the major issue was the state's Right to Farm Act (RFA), and whether it would apply to urban farms in the City if commercial sales were allowed. If it did apply, it would take away local government's ability to regulate the farms. She stated that GAAMPs were geared toward large farms, regulating things such as livestock and pesticides. Most of the regulations listed in the proposed City ordinance are not addressed in GAAMPs. L. Spataro asked if the City would still be able to regulate livestock if the state asserted control under the RTF Act. M. Landis stated that a recent update to the GAAMPs gave local municipalities the right to regulate livestock. L. Spataro was also concerned with possible run-offs that may affect Muskegon Lake, since there had been so much effort put into getting the lake delisted as an area of concern. M. Landis stated that the legal concern was whether a local municipality could craft an ordinance to reflect local and specific needs of the community, and if allowing commercial farming would allow the state to take control. B. Mazade asked if commercial farming referred to sales. M. Landis stated that was correct—any sales would be viewed as commercial farming. T. Michalski asked if adopting the ordinance that disallowed commercial sales would exempt the City from outside controls. M. Landis stated that was correct—the state Right to Farm Act would not apply if commercial sales were not allowed.

The board listened to several comments during the public hearing, all of which supported allowing commercial sales of produce from urban farms. M. Bear spoke on behalf of Love Community Garden (LCG), who had been in existence for almost 10 years. She stated that they have always complied with City ordinance requirements, and she was disappointed that LCG was not asked to be involved in the process of crafting the new ordinance. She stated that allowing commercial sales of their produce would create more jobs, and was essential to keeping the garden sustainable. She disagreed with some requirements listed in the ordinances proposed by the City, including the side setbacks and the fencing-in of portable toilet facilities. C. Burnaw stated that she was an advocate for a healthy Muskegon, and was in favor of allowing commercial sales. She cited the potential to create jobs, introducing people to healthy eating habits, and sustainability of the farms as reasons to allow sales of produce. C. McGuigan represented the Community Foundation for Muskegon County. She stated that the Foundation had partnered with several health initiatives involving farming or gardening, and has provided grants as well. She stated that the organizations all had a goal of selling their produce, and urged the board members to recommend approval of the version of the ordinance allowing commercial sales. She asked that the process be paused to allow input from community farmers and others with an interest in promoting a healthy community. J. EldenBrady was in favor of allowing farmers to sell their produce. He had applied for a business license to do that but was denied, and he was now going through the appeal process. He stated that there was inconsistency in the way urban farms were handled, and he was hopeful that the City would encourage farming, not try to discourage it with an ordinance that was unclear or confusing. C. Price stated that she had an extensive background in urban farming policy. She was in favor of allowing commercial sales so that the farms could be self-supporting. She stated that the sample ordinance submitted by LCG was an excellent example of an urban farming ordinance. C. Yothers of McLaughlin Grows stated that commercial sales were crucial to a garden's sustainability, and hoped that Muskegon would become a

leader in urban farming. Rep. M. Hovey-Wright stated that she was on the agricultural committee in Lansing, and that it was important to encourage local farming. She stated that the City of Detroit's urban farming ordinance was a good model to use, and she provided a copy of that to staff. M. Hovey-Wright urged staff and the Planning Commissioners to support urban farms, including allowing the sale of produce. She stated that farms helped neighbors connect, which was important for the health of cities. V. Riegler submitted a letter from Unity Church of Muskegon in support of allowing commercial produce sales, stating that community gardens were beneficial to cities in many ways. R. Hesselink discussed food hubs and food miles, and was in favor of allowing commercial sales of urban farms produce. She cited local spending, job creation and supporting local businesses as reasons to allow commercial sales. D. Warren was a dietician and she was also in favor of allowing commercial sales. She stated that the urban farms could bring energy and jobs to Muskegon. She also stated that when applying for grants, the grantors always wanted to know how the project would be sustainable, and allowing sales of produce could accomplish that.

M. Landis responded to some legal issues that were brought up. She stated that the amendment to GAAMPs that was mentioned applied only to livestock, not to produce. Regarding the City of Detroit, although she did speak to someone from there when researching the City of Muskegon's proposed ordinance, GAAMPs do not apply to cities with population over 100,000. Therefore, Detroit did not have to deal with that issue, as Muskegon does. She reiterated that she had spoken to top officials at the Department of Agriculture, and it was clear that the state Right to Farm Act would apply if the City of Muskegon allowed commercial sales of produce. This would, in turn, usurp local authority to regulate farms in our community.

A motion to close the public hearing was made by B. Larson, supported by S. Wisneski and unanimously approved.

L. Spataro agreed that additional due diligence on this issue would be helpful. He stated that it was not about the City being for or against urban farming. The City had an obligation to ensure a livable community for all residents, and any commercial activity in a residential setting could have an adverse impact on people living there, including noise and traffic concerns. Therefore, it was important that the City be allowed to regulate the urban farms, and balance the needs of its residents. He suggested sending the issue back to staff for additional review. Board members discussed the process desired to come up with a revised ordinance to present. T. Michalski stated that he was in favor of allowing commercial sales, but had concerns about issues such as soil contamination. He asked board members to communicate their comments and concerns to staff before the next meeting. B. Mazade stated that the major issue was to allow commercial sales or not, and he suggested getting a sample ordinance distributed to Planning Commissioners to review first, before having another public hearing. C. Brubaker stated that the City did not have the time nor the staff to monitor things like soil contamination, and that was taken into consideration when drafting the ordinances presented today. S. Wisneski was also concerned about the inequalities of non-profit agencies competing with for-profit businesses, who had additional regulatory and tax restrictions. He also asked if the Health Department would need to be involved if sales were allowed.

A motion that this case be tabled until a future meeting so that staff could collect input and do further research on this issue was made by B. Larson, supported by L. Spataro and unanimously approved.

OLD BUSINESS

None.

OTHER

None.

There being no further business, the meeting was adjourned at 5:20 p.m.

CITY OF MUSKEGON
PLANNING COMMISSION
REGULAR MEETING

STAFF REPORT

October 16, 2014

Hearing, Case 2014-12: Staff initiated request to amend the zoning ordinance to allow medical marihuana dispensaries in B-2 (Convenience and Comparison Business), B-3 (Central Business), B-4 (General Business), B-5 (Governmental Business), MC (Medical Care), I-1 (Light Industrial) and I-2 (General Industrial) districts.

STAFF OBSERVATIONS

1. See the enclosed proposed city ordinance on medical marijuana. The ordinance was approved at the September 23 City Commission meeting, but will have to go back for a second reading on October 14 because it was not unanimous, with one City Commissioner voting no.
2. The city ordinance was written to allow medical marijuana dispensaries in B-2 (Convenience and Comparison Business), B-3 (Central Business), B-4 (General Business), B-5 (Governmental Business), MC (Medical Care), I-1 (Light Industrial) and I-2 (General Industrial) districts.
3. Currently, medical marihuana caregiver facilities are only allowed in I-2, General Industrial districts.
4. A medical marihuana dispensary is defined in the ordinance as one or more primary caregivers growing, storing, delivering, transferring, and/or providing qualifying patients with medical marihuana out of a building or structure.
5. The Planning Commission is being asked to approve the districts that these dispensaries will be allowed to operate as a principal use permitted.

NEW LANGUAGE

Deletions are ~~crossed out~~ and additions are in **bold**:

Amendment to Section 904

- 15. Medical Marihuana dispensaries to the extent licensed pursuant to City Code Sections 34-101 through 31-116.**

Amendment to Article XI, Section 1100

- 14. Medical Marihuana dispensaries to the extent licensed pursuant to City Code Sections 34-101 through 31-116.**

Amendment to Article XII, Section 1200

- 10. Medical Marihuana dispensaries to the extent licensed pursuant to City Code Sections 34-101 through 31-116.**

Amendment to Article XIII, Section 1300

- 15. Medical Marihuana dispensaries to the extent licensed pursuant to City Code Sections 34-101 through 31-116.**

Amendment to Section 1304

- 13. Medical Marihuana dispensaries to the extent licensed pursuant to City Code Sections 34-101 through 31-116.**

Amendment to Article XIV, Section 1400

- 12. Medical Marihuana dispensaries to the extent licensed pursuant to City Code Sections 34-101 through 31-116.**

Amendment to Article XV, Section 1500

- ~~8. Medical Marihuana caregiver facilities to the extent licensed pursuant to City Code Sections 34-101 through 43-107.~~ **Medical Marihuana dispensaries to the extent licensed pursuant to City Code Sections 34-101 through 31-116.**

MOTION FOR CONSIDERATION

I move that the amendments to principal uses permitted sections of the B-2, B-3, B-4, B-5, MC, I-1 and I-2 districts of the Zoning Ordinance be recommended to City Commission for (approval/denial).

OLD BUSINESS

Case 2014-11: Staff initiated request to amend Section 2313 (Community Gardens) of the zoning ordinance to replace it with an urban farming ordinance.

BACKGROUND

1. The public hearing for this case was closed at the September 11 Planning Commission meeting.
2. Staff was directed to take comments from Planning Commissioners, farmers and the general public and to have a discussion about the proposed zoning ordinance amendment at the October meeting.
3. Staff met with several farming groups on October 6 to discuss some changes to the proposed ordinance. The following changes were written in the proposed ordinances.
 - 15' setback for tall crops in front, 5' setback on sides and back if a fence is erected.
 - Crop areas and planting beds shall have the same setback requirements.
 - Allow low ornamental plantings within the setback areas. Mulch may also be used except within the first 5' of the front setback.
 - Temporary restrooms may be screened by plants or structures in lieu of fencing.

**City of Muskegon
Muskegon County, Michigan
Ordinance Amendment No. _____**

THE CITY OF MUSKEGON HEREBY ORDAINS:

Article XXIII, Section 2313, Community Gardens, of the City of Muskegon Zoning Ordinance is amended in its entirety as follows.

SECTION 2313: COMMUNITY GARDENS, URBAN FARMS and PRIVATE FARMS

1. Definitions

- a. Urban Farm (“farm”): a vacant parcel of land (or combination of two or more vacant adjacent lots) that is used for the cultivation of fruits and vegetables, plants, flowers or herbs by a city-recognized neighborhood group or 501(c) non-profit organization who work together to tend a single garden or several garden plots or crops on the parcel. An Urban Farm is not an individual garden maintained by its property owner(s) or occupant(s).
- b. Community Garden (“garden”): a vacant parcel of land or vacant portion of a parcel of land that is divided into plots for cultivation of fruits and vegetables, plants, flowers or herbs by one or more individuals and/or groups or cultivated by individuals and/or groups collectively. The land may or may not be owned by a participating member of the community garden group. The Community Garden need not be operated by a city-recognized group or 501(c) non-profit organization.
- c. Cold Frame: a transparent-roofed enclosure, built low to the ground, used to protect plants from adverse weather. The transparent top admits sunlight and prevents heat escape via convection that would otherwise occur, particularly at night. Essentially, a cold frame functions as a miniature greenhouse to extend the growing season.
- d. Compost: relatively stable decomposed organic matter for use in agricultural and other growing practices, usually consisting of materials such as grass, leaves, yard waste, worms, and also including raw and uncooked kitchen food wastes, but specifically excluding bones, meat, fat grease, oil, raw manure and milk products.
- e. Farm Animals: all animals traditionally found or used on an operating farm, including but not limited to, horses, sheep, goats, cows, chickens, donkeys, turkeys and alpaca.
- f. Farm Equipment and Tools: those pieces of machinery and tools used to prepare the soil, cultivate produce, fertilize, harvest, etc., including but not limited to, tractors, rototillers, rakes, shovels, hoes, fertilizer, pesticide and herbicide spreaders and sprayers, etc.
- g. Greenhouse: A building or structure whose roof and sides are made largely of glass or other transparent or translucent material and in which the temperature and humidity can be regulated for the cultivation of plants.

h. Hoop house: an unheated structure whose roof and sides are made largely of transparent or translucent material (not glass) for the purpose of the cultivation of plants inside.

i. Orchard: The establishment, care, harvesting of a group of more than ten (10) fruit or nut bearing trees.

j. Private Farm: A vacant parcel of land (or combination of two or more vacant adjacent lots) used to grow and harvest food crops and/or non-food crops for personal use by the owner or tenant of the land.

k. Private Farmer: the individual in charge of operating the Private Farm on property that s/he owns or leases.

l. Urban Farm Coordinator: the Urban Farm's designated liaison to the city.

m. Rainwater Catchment System: a method of catching rainwater runoff from the roof of a structure into rain gutters that channel into a rain barrel, drum or cistern.

2. The Urban Farm is intended to bring citizens together to work collaboratively in growing food for their personal use or donation, to promote education with regard to agriculture, provide a positive communal environment for children and adults living nearby and an opportunity for volunteer work among participants. A Private Farm is distinguished from an Urban Farm in that it is operated by a private party who owns or leases the property for the sole purpose of cultivating food and non-food products for personal consumption and use.

3. The agricultural uses of Community Gardens, Private Farms and Urban Farms are limited to the cultivation of herbs, fruits, flowers, or vegetables, including the cultivation and tillage of soil and the production, cultivation, growing and harvesting of any agricultural, floricultural, or horticultural produce. No farm animals are permitted.

4. Community Gardens, Private Farms and Urban Farms are a permitted use in all Zoning Districts but require prior approval of the Zoning Administrator.

5. The products grown in the Community Garden, Private Farms and Urban Farms are not to be sold commercially. Only the Urban Farm groups may accept donations from individuals or other non-profit organizations in exchange for products grown in the garden. Any such donations shall be used to further sustain the operation and support the mission of the Urban Farm.

6. Garden Coordinator and Urban Farm Coordinator

Each Community Garden shall have a Garden Coordinator ("Coordinator") and each Urban Farm shall have an Urban Farm Coordinator designated as its liaison to the City. The Coordinator's name and contact information shall be given to the Zoning Administrator.

7. The Garden Coordinator, Urban Farm Coordinator or Private Farmer shall submit a site plan to the Zoning Administrator for approval prior to beginning the garden or farm.

a. The site plan must include the following:

i. The name of the Garden Coordinator, Urban Farm Coordinator or Private Farmer.

- ii. The project address.
- iii. The legal owner of the parcel(s).
- iv. If the Community Garden, Urban Farm organization or Private Farmer is a tenant, include the length of the current lease.
- v. The project name (if any).
- vi. Gross site area of parcel(s) to be used, including dimensions.
- vii. Location map showing all existing structures and proposed improvements to the parcel with dimensions, including height and set-backs.
- viii. Major roads abutting parcel(s).
- ix. Location of all lakes, streams, rivers, creeks, brooks, ponds or wetlands adjacent to or in the immediate vicinity of the parcel(s).
- x. Location of the crop areas.
- xi. Fencing or walls.
- xii. Location of compost piles.
- xiii. Ingress and egress.
- xiv. Location of loading areas.
- xv. Location of trash containers and/or dumpsters.
- xvi. Location of storage structure and items to be stored.
- xvii. Location and description of sign(s), if any.

b. The site plan shall also include a narrative generally describing the following, as applicable:

- i. The types, methods of application, storage of proposed pesticides, herbicides, fertilizers, and any other chemicals that will be used.
- ii. The type of machinery and equipment proposed and description of the noise, vibration, smoke, odor, dust, dirt that may be a nuisance to surrounding properties.
- iii. Evaluation of existing soil conditions and plans to mitigate soil issues, as necessary.

c. The Garden Coordinator or Urban Farmer shall update the site plan with the Zoning Administrator as changes or additions are made to the site plan items enumerated in Section (a) above.

8. The garden or farm must be designed and maintained so that water, chemicals, dirt, mud or fertilizer will not drain into the streets, alleys or adjacent properties. Any use of pesticides or fertilizers must comply with applicable state or federal regulations.

9. Setback, height and size requirements.

a. Buildings and accessory structures must comply with the setback, height and size requirements of the zoning district in which the garden or farm is located. Hoop houses and greenhouses are considered primary structures. Sheds and garages are considered accessory structures.

b. Cultivation must comply with the following additional setback requirements:

- i. Crop areas and planting beds must be set back at least five (5) feet from all property lines. This may be reduced to three (3) feet within the presence of a fence.
- ii. Orchards and all crops reaching a height of five (5) feet at maturity shall be set back at least fifteen (15) feet from all property lines. The side and back setbacks may be reduced to five (5) feet within the presence of a fence.

- iv. Rain barrel systems must be set back at least three (3) feet from all property lines.
- v. The required setback areas must be covered with ground plants, which may include native or ornamental grasses and low ornamental plantings. Mulch may also be used as an appropriate ground covering except in the first five (5) feet of the front setback.
- vi. Compost areas or waste bins must be less than sixteen (16) square feet in size and must be set back at least ten (10) feet from all property lines and at least twenty (20) feet from the nearest principal residential structure.

10. Site plans containing the following may be included if they are not an obstruction to clear vision at drives or intersections, they meet designated set back requirements and they do not create an odor or other nuisance for neighboring properties:

- a. Compost or waste bins
- b. Picnic tables
- c. Garden art
- d. Rain barrel systems or rainwater catchment systems
- e. Benches
- f. Bike racks
- g. Raised/accessible planting beds
- h. Cold frames
- i. Planting beds
- j. Sheds
- k. Garages
- l. Greenhouses
- m. Hoop houses

11. Designated on site parking shall not be permitted.

12. The Urban Farm and Community Garden shall have a sign indicating an established set of hours of operation. The sign may indicate the farm, group or garden name. The sign shall be no larger than 5'x5' and must indicate the name and contact telephone number for the Urban Farm Coordinator or Garden Coordinator.

13. All fencing requires a Development Permit and must comply with existing fencing rules and regulations.

14. No water or irrigation wells may be installed unless by a state-licensed well-drilling firm, and with approval and necessary permit from the City and County. If the Community Garden is located on a city owned parcel, the city must first grant approval of the well. All groundwater wells located on city property must be removed by the responsible group, at their expense, when the garden is no longer in use.

15. Farm animals, including all livestock, are prohibited in a Community Garden, Urban Farm or Private Farm.

16. Oats, wheat and rye may be used as a winter cover crop but not grown to full maturity in any season.

17. Trash shall be located to the rear of the property unless the Department of Public Works determines that another location creates less impact on the adjacent properties.

18. Lighting, if provided, shall be shielded so that all directly emitted light falls within the property.

19. Property Maintenance.

- a. The property shall be maintained free of high grass (with the exception of purposely cultivated native species, which shall be allowed), noxious weeds, or debris. Dead garden plants shall be removed regularly, and in any instance, no later than November 30th of each year.
- b. Plants from cultivated areas shall be prevented from encroaching onto adjacent properties or onto the public right-of-way.
- c. The property shall generally be maintained in an orderly and neat condition.
- d. Farm equipment and tools shall be stored in a shed or other approved structure on the premises.
- e. Seeds and harvested crops on site shall be stored so as not to attract animals.

20. Nuisance.

Agricultural uses of community gardens, urban farms and private farms shall not be detrimental to the physical environment or to the public health and general welfare by reason of excessive production of noise, smoke, fumes, vibrations, or odors.

21. Motorized and other equipment; storage; noise; hours of operation.

- a. Tools, supplies and machinery shall be stored in an enclosed structure or removed from the property daily. All chemicals and fuels shall be stored off of the ground, in an enclosed, locked structure when the site is unattended.
- b. Motorized equipment within a residential zoning district shall be restricted to hours beginning at 8:00a.m. and ending at 8:00p.m

22. Restroom facilities.

If temporary restroom facilities are provided on site, they shall be screened on at least three (3) sides from public view by fencing, structures or plantings of sufficient height. Such facilities are allowed only during the growing season from April 15th through October 15th.

23. Compost.

Compost must be maintained and stored to avoid any odor reaching neighboring property.

24. Compliance with Other Regulations.

Community gardens, urban farms and private farms shall comply with all applicable local, state and federal regulations.

This ordinance adopted:

Ayes: _____
Nays: _____

Adoption Date: _____
Effective Date: _____
First Reading: _____
Second Reading: _____

By _____ Ann
Cummings, MMC
City Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the _____ day of _____, 2014, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted, and public notice was given, pursuant to and in full compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

DATED: _____, 2014

Ann Cummings, MMC
Clerk, City of Muskegon

Publish: Notice of Adoption to be published once within ten (10) days of final adoption.

**CITY OF MUSKEGON
NOTICE OF ADOPTION**

TO: ALL PERSONS INTERESTED

Please take notice that on _____, 2014, the City Commission of the City of Muskegon adopted an amendment to Article XXIII, Section 2313, Community Gardens, of the City of Muskegon Zoning Ordinance, whereby the section was replaced in its entirety with the following:

Section 2313 was renamed “Community Gardens, Urban Farms and Private Farms”

1. Section 1 defines the terms used in the ordinance.
2. Section 2 describes the Urban Farm as a collaborative effort run by a city-recognized neighborhood group or 501(c) non-profit organization, to grow food, promote education and provide a positive communal environment for volunteers and the neighborhood. A Private Farm is distinguished from an Urban Farm in that it is operated by a private party who owns or leases the property for the sole purpose of cultivating food and non-food products for personal consumption and use.
3. Section 3 indicates that the gardens and farms are limited to growing and harvesting agricultural, floricultural or horticultural produce. No farm animals are permitted.
4. Section 4 states that the gardens and farms are permitted uses in all zoning districts but require approval of the Zoning Administrator.
5. Section 5 provides that products from the gardens or farms may not be sold commercially. Urban Farms may accept donations from individuals or other non-profit organizations in exchange for products grown in the garden when such donations are used to further sustain the operation and support the mission of the Urban Farm.
6. Section 6 requires each Community Garden and Urban Farm to designate a Garden Coordinator or Urban Farm Coordinator as a liaison to the City.
7. Section 7 outlines the requirement of all site plans to be submitted for approval to the Zoning Administrator.
 - a. Section 7(a) lists all items to be included in the site plan, including but not limited to its dimensions, structures, growing areas, fencing, compost piles, etc.
 - b. Section 7(b) requires the site plan to include, among other things, a narrative describing the chemicals and equipment to be used and the existing soil conditions.
 - c. Section 7(c) requires that the site plan be updated with any changes or additions.

8. Section 8 prohibits the design and maintenance to allow for any water, chemicals, dirt, mud or fertilizer to drain onto adjacent property.
9. Section 9 outlines the setback, height and size requirements.
 - a. Section 9(a) provides that all structures must comply with the setback, height and size requirements of the zoning district in which the garden or farm is located.
 - b. Section 9(b) outlines additional setback requirements for crop areas, orchards, planting beds, rain barrels systems and compost bins.
10. Section 10 lists items that may be included on a site plan, including but not limited to, planting beds, compost bins, sheds, garages, greenhouses and hoop houses.
11. Section 11 prohibits on site parking.
12. Section 12 requires Community Gardens and Urban Farms to have posted hours of operation and indicate the name and contact telephone number of the Garden Coordinator or Urban Farm Coordinator.
13. Section 13 requires a development permit for all fencing.
14. Section 14 requires a permit from the city and county for wells.
15. Section 15 prohibits all farm animals, including livestock, in gardens or farms.
16. Section 16 prohibits growing oats, wheat and rye to full maturity.
17. Section 17 requires that trash be kept at the rear of the property unless the city determines another location would have less impact on adjacent properties.
18. Section 18 requires any lights to be shielded so that it falls within the property.
19. Section 19 outlines the property maintenance standards.
 - a. Section 19(a) prohibits high grass, noxious weeds and debris and requires that dead plants be removed regularly.
 - b. Section 19(b) prohibits allowing plants to encroach on neighboring properties.
 - c. Section 19(c) requires the garden/farm be orderly and neat.
 - d. Section 19(d) requires farm equipment and tools to be stored in a shed or other approved structure on the premises.
 - e. Section 19(e) requires that seeds and harvested crops be stored so as not to attract animals.
20. Section 20 prohibits excessive noise, smoke, fumes, vibrations or odors.
21. Section 21 outlines regulations for motorized equipment, tools and machinery.
 - a. Section 21(a) requires all tools, supplies and machinery to be stored in an enclosed structure and all chemicals stored off the ground.

b. Section 21(b) prohibits motorized equipment between 8:00pm and 8:00am.

22. Section 22 provides for temporary restroom facilities on site from April 15th through October 15th, if screened on three sides from public view.

23. Section 23 requires compost to be maintained and stored to avoid any odor reaching neighbors.

24. Section 24 requires gardens and farms to comply with all other local, state and federal regulations.

Copies of the ordinance may be viewed and purchased at reasonable cost at the Office of the City Clerk in _____ the City Hall, 933 Terrace Street, Muskegon, Michigan, during regular business hours.

This ordinance amendment is effective ten (10) days from the date of this publication.

CITY OF MUSKEGON

Published: _____, 2014

By: _____
Ann Cummings, MMC, Its Clerk

PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE

**City of Muskegon
Muskegon County, Michigan
Ordinance Amendment No. _____**

THE CITY OF MUSKEGON HEREBY ORDAINS:

Article XXIII, Section 2313, Community Gardens, of the City of Muskegon Zoning Ordinance is amended in its entirety as follows.

SECTION 2313: COMMUNITY GARDENS, URBAN FARMS and PRIVATE FARMS

1. Definitions

- a. Urban Farm (“farm”): a vacant parcel of land (or combination of two or more vacant adjacent lots) that is used for the cultivation of fruits and vegetables, plants, flowers or herbs by a city-recognized neighborhood group or 501(c) non-profit organization who work together to tend a single garden or several garden plots or crops on the parcel. An Urban Farm is not an individual garden maintained by its property owner(s) or occupant(s).
- b. Community Garden (“garden”): a vacant parcel of land or vacant portion of a parcel of land that is divided into plots for cultivation of fruits and vegetables, plants, flowers or herbs by one or more individuals and/or groups or cultivated by individuals and/or groups collectively. The land may or may not be owned by a participating member of the community garden group. The Community Garden need not be operated by a city-recognized group or 501(c) non-profit organization.
- c. Cold Frame: a transparent-roofed enclosure, built low to the ground, used to protect plants from adverse weather. The transparent top admits sunlight and prevents heat escape via convection that would otherwise occur, particularly at night. Essentially, a cold frame functions as a miniature greenhouse to extend the growing season.
- d. Compost: relatively stable decomposed organic matter for use in agricultural and other growing practices, usually consisting of materials such as grass, leaves, yard waste, worms, and also including raw and uncooked kitchen food wastes, but specifically excluding bones, meat, fat grease, oil, raw manure and milk products.
- e. Farm Animals: all animals traditionally found or used on an operating farm, including but not limited to, horses, sheep, goats, cows, chickens, donkeys, turkeys and alpaca.
- f. Farm Equipment and Tools: those pieces of machinery and tools used to prepare the soil, cultivate produce, fertilize, harvest, etc., including but not limited to, tractors, rototillers, rakes, shovels, hoes, fertilizer, pesticide and herbicide spreaders and sprayers, etc.
- g. Greenhouse: A building or structure whose roof and sides are made largely of glass or other transparent or translucent material and in which the temperature and humidity can be regulated for the cultivation of plants.

- h. Hoop house: an unheated structure whose roof and sides are made largely of transparent or translucent material (not glass) for the purpose of the cultivation of plants inside.
 - i. Orchard: The establishment, care, harvesting of a group of more than ten (10) fruit or nut bearing trees.
 - j. Private Farm: A vacant parcel of land (or combination of two or more vacant adjacent lots) used to grow and harvest food crops and/or non-food crops for personal use by the owner or tenant of the land.
 - k. Private Farmer: the individual in charge of operating the Private Farm on property that s/he owns or leases.
 - l. Urban Farm Coordinator: the Urban Farm's designated liaison to the city.
 - m. Rainwater Catchment System: a method of catching rainwater runoff from the roof of a structure into rain gutters that channel into a rain barrel, drum or cistern.
2. The Urban Farm is intended to bring citizens together to work collaboratively in growing food for their personal use or donation, to promote education with regard to agriculture, provide a positive communal environment for children and adults living nearby and an opportunity for volunteer work among participants. A Private Farm is distinguished from an Urban Farm in that it is operated by a private party who owns or leases the property for the sole purpose of cultivating food and non-food products for personal consumption and use.
 3. The agricultural uses of Community Gardens, Private Farms and Urban Farms are limited to the cultivation of herbs, fruits, flowers, or vegetables, including the cultivation and tillage of soil and the production, cultivation, growing and harvesting of any agricultural, floricultural, or horticultural produce. No farm animals are permitted.
 4. Community Gardens, Private Farms and Urban Farms are a permitted use in all Zoning Districts but require prior approval of the Zoning Administrator.
 5. No on-site sales shall be permitted. The products grown in the Community Garden, Private Farms and Urban Farms may be sold commercially within the City to non-profit organizations such as schools, at the City farmers' market, to restaurants, to grocery stores and to convenience stores that sell food products. Only Urban Farm groups may accept donations directly from individuals in exchange for products grown in the garden if such donations shall be used to further sustain the operation and support the mission of the Urban Farm.

6. Garden Coordinator and Urban Farm Coordinator

Each Community Garden shall have a Garden Coordinator (“Coordinator”) and each Urban Farm shall have an Urban Farm Coordinator designated as its liaison to the City. The Coordinator’s name and contact information shall be given to the Zoning Administrator.

7. The Garden Coordinator, Urban Farm Coordinator or Private Farmer shall submit a site plan to the Zoning Administrator for approval prior to beginning the garden or farm.

a. The site plan must include the following:

- i. The name of the Garden Coordinator, Urban Farm Coordinator or Private Farmer.
- ii. The project address.
- iii. The legal owner of the parcel(s).
- iv. If the Community Garden, Urban Farm organization or Private Farmer is a tenant, include the length of the current lease.
- v. The project name (if any).
- vi. Gross site area of parcel(s) to be used, including dimensions.
- vii. Location map showing all existing structures and proposed improvements to the parcel with dimensions, including height and set-backs.
- viii. Major roads abutting parcel(s).
- ix. Location of all lakes, streams, rivers, creeks, brooks, ponds or wetlands adjacent to or in the immediate vicinity of the parcel(s).
- x. Location of the crop areas.
- xi. Fencing or walls.
- xii. Location of compost piles.
- xiii. Ingress and egress.
- xiv. Location of loading areas.
- xv. Location of trash containers and/or dumpsters.
- xvi. Location of storage structure and items to be stored.
- xvii. Location and description of sign(s), if any.

b. The site plan shall also include a narrative generally describing the following, as applicable:

- i. The types, methods of application, storage of proposed pesticides, herbicides, fertilizers, and any other chemicals that will be used.
- ii. The type of machinery and equipment proposed and description of the noise, vibration, smoke, odor, dust, dirt that may be a nuisance to surrounding properties.
- iii. Evaluation of existing soil conditions and plans to mitigate soil issues, as necessary.

- c. The Garden Coordinator or Urban Farmer shall update the site plan with the Zoning Administrator as changes or additions are made to the site plan items enumerated in Section (a) above.
8. The garden or farm must be designed and maintained so that water, chemicals, dirt, mud or fertilizer will not drain into the streets, alleys or adjacent properties. Any use of pesticides or fertilizers must comply with applicable state or federal regulations.
9. Setback, height and size requirements.
- a. Buildings and accessory structures must comply with the setback, height and size requirements of the zoning district in which the garden or farm is located. Hoop houses and greenhouses are considered primary structures. Sheds and garages are considered accessory structures.
 - b. Cultivation must comply with the following additional setback requirements:
 - i. Crop areas and planting beds must be set back at least five (5) feet from all property lines. This may be reduced to three (3) feet within the presence of a fence.
 - ii. Orchards and all crops reaching a height of five (5) feet at maturity shall be set back at least fifteen (15) feet from all property lines. The side and back setbacks may be reduced to five (5) feet within the presence of a fence.
 - iv. Rain barrel systems must be set back at least three (3) feet from all property lines.
 - v. The required setback areas must be covered with ground plants, which may include native or ornamental grasses and low ornamental plantings. Mulch may also be used as an appropriate ground covering except in the first five (5) feet of the front setback.
 - vi. Compost areas or waste bins must be less than sixteen (16) square feet in size and must be set back at least ten (10) feet from all property lines and at least twenty (20) feet from the nearest principal residential structure.
10. Site plans containing the following may be included if they are not an obstruction to clear vision at drives or intersections, they meet designated set back requirements and they do not create an odor or other nuisance for neighboring properties:
- a. Compost or waste bins
 - b. Picnic tables
 - c. Garden art
 - d. Rain barrel systems or rainwater catchment systems
 - e. Benches
 - f. Bike racks
 - g. Raised/accessible planting beds
 - h. Cold frames
 - i. Planting beds
 - j. Sheds

- k. Garages
- l. Greenhouses
- m. Hoop houses

11. Designated on site parking shall not be permitted.

12. The Urban Farm and Community Garden shall have a sign indicating an established set of hours of operation. The sign may indicate the farm, group or garden name. The sign shall be no larger than 5'x5' and must indicate the name and contact telephone number for the Urban Farm Coordinator or Garden Coordinator.

13. All fencing requires a Development Permit and must comply with existing fencing rules and regulations.

14. No water or irrigation wells may be installed unless by a state-licensed well-drilling firm, and with approval and necessary permit from the City and County. If the Community Garden is located on a city owned parcel, the city must first grant approval of the well. All groundwater wells located on city property must be removed by the responsible group, at their expense, when the garden is no longer in use.

15. Farm animals, including all livestock, are prohibited in a Community Garden, Urban Farm or Private Farm.

16. Oats, wheat and rye may be used as a winter cover crop but not grown to full maturity in any season.

17. Trash shall be located to the rear of the property unless the Department of Public Works determines that another location creates less impact on the adjacent properties.

18. Lighting, if provided, shall be shielded so that all directly emitted light falls within the property.

19. Property Maintenance.

- a. The property shall be maintained free of high grass (with the exception of purposely cultivated native species, which shall be allowed), noxious weeds, or debris. Dead garden plants shall be removed regularly, and in any instance, no later than November 30th of each year.
- b. Plants from cultivated areas shall be prevented from encroaching onto adjacent properties or onto the public right-of-way.
- c. The property shall generally be maintained in an orderly and neat condition.
- d. Farm equipment and tools shall be stored in a shed or other approved structure on the premises.
- e. Seeds and harvested crops on site shall be stored so as not to attract animals.

20. Nuisance.

Agricultural uses of community gardens, urban farms and private farms shall not be detrimental to the physical environment or to the public health and general welfare by reason of excessive production of noise, smoke, fumes, vibrations, or odors.

21. Motorized and other equipment; storage; noise; hours of operation.

- a. Tools, supplies and machinery shall be stored in an enclosed structure or removed from the property daily. All chemicals and fuels shall be stored off of the ground, in an enclosed, locked structure when the site is unattended.
- b. Motorized equipment within a residential zoning district shall be restricted to hours beginning at 8:00a.m. and ending at 8:00p.m

22. Restroom facilities.

If temporary restroom facilities are provided on site, they shall be screened on at least three (3) sides from public view by fencing, structures or plantings of sufficient height. Such facilities are allowed only during the growing season from April 15th through October 15th.

23. Compost.

Compost must be maintained and stored to avoid any odor reaching neighboring property.

24. Compliance with Other Regulations.

Community gardens, urban farms and private farms shall comply with all applicable local, state and federal regulations.

This ordinance adopted:

Ayes: _____

Nays: _____

Adoption Date: _____

Effective Date: _____

First Reading: _____

Second Reading: _____

CITY OF MUSKEGON

By _____ Ann
Cummings, MMC
City Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the_____ day of_____, 2014, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted, and public notice was given, pursuant to and in full compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

DATED:_____, 2014

Ann Cummings, MMC
Clerk, City of Muskegon

Publish: Notice of Adoption to be published once within ten (10) days of final adoption.

**CITY OF MUSKEGON
NOTICE OF ADOPTION**

TO: ALL PERSONS INTERESTED

Please take notice that on _____, 2014, the City Commission of the City of Muskegon adopted an amendment to Article XXIII, Section 2313, Community Gardens, of the of the City of Muskegon Zoning Ordinance, whereby the section was replaced in its entirety with the following:

Section 2313 was renamed “Community Gardens, Urban Farms and Private Farms”

1. Section 1 defines the terms used in the ordinance.
2. Section 2 describes the Urban Farm as a collaborative effort run by a city-recognized neighborhood group or 501(c) non-profit organization, to grow food, promote education and provide a positive communal environment for volunteers and the neighborhood. A Private Farm is distinguished from an Urban Farm in that it is operated by a private party who owns or leases the property for the sole purpose of cultivating food and non-food products for personal consumption and use.
3. Section 3 indicates that the gardens and farms are limited to growing and harvesting agricultural, floricultural or horticultural produce. No farm animals are permitted.
4. Section 4 states that the gardens and farms are permitted uses in all zoning districts but require approval of the Zoning Administrator.
5. Section 5 provides that products from the gardens or farms may be sold commercially within the City to non-profit organizations such as schools, at the City’s farmers market, or grocery stores or convenience stores selling food products . Urban Farms may accept donations from individuals in exchange for products grown in the garden when such donations are used to further sustain the operation and support the mission of the Urban Farm.
6. Section 6 requires each Community Garden and Urban Farm to designate a Garden Coordinator or Urban Farm Coordinator as a liaison to the City.
7. Section 7 outlines the requirement of all site plans to be submitted for approval to the Zoning Administrator.
 - a. Section 7(a) lists all items to be included in the site plan, including but not limited to its dimensions, structures, growing areas, fencing, compost piles, etc.
 - b. Section 7(b) requires the site plan to include, among other things, a narrative describing the chemicals and equipment to be used and the existing soil conditions.
 - c. Section 7(c) requires that the site plan be updated with any changes or additions.

8. Section 8 prohibits the design and maintenance to allow for any water, chemicals, dirt, mud or fertilizer to drain onto adjacent property.
9. Section 9 outlines the setback, height and size requirements.
 - a. Section 9(a) provides that all structures must comply with the setback, height and size requirements of the zoning district in which the garden or farm is located.
 - b. Section 9(b) outlines additional setback requirements for crop areas, orchards, planting beds, rain barrels systems and compost bins.
10. Section 10 lists items that may be included on a site plan, including but not limited to, planting beds, compost bins, sheds, garages, greenhouses and hoop houses.
11. Section 11 prohibits on site parking.
12. Section 12 requires Community Gardens and Urban Farms to have posted hours of operation and indicate the name and contact telephone number of the Garden Coordinator or Urban Farm Coordinator.
13. Section 13 requires a development permit for all fencing.
14. Section 14 requires a permit from the city and county for wells.
15. Section 15 prohibits all farm animals, including livestock, in gardens or farms.
16. Section 16 prohibits growing oats, wheat and rye to full maturity.
17. Section 17 requires that trash be kept at the rear of the property unless the city determines another location would have less impact on adjacent properties.
18. Section 18 requires any lights to be shielded so that it falls within the property.
19. Section 19 outlines the property maintenance standards.
 - a. Section 19(a) prohibits high grass, noxious weeds and debris and requires that dead plants be removed regularly.
 - b. Section 19(b) prohibits allowing plants to encroach on neighboring properties.
 - c. Section 19(c) requires the garden/farm be orderly and neat.
 - d. Section 19(d) requires farm equipment and tools to be stored in a shed or other approved structure on the premises.
 - e. Section 19(e) requires that seeds and harvested crops be stored so as not to attract animals.
20. Section 20 prohibits excessive noise, smoke, fumes, vibrations or odors.
21. Section 21 outlines regulations for motorized equipment, tools and machinery.
 - a. Section 21(a) requires all tools, supplies and machinery to be stored in an enclosed structure and all chemicals stored off the ground.

b. Section 21(b) prohibits motorized equipment between 8:00pm and 8:00am.

22. Section 22 provides for temporary restroom facilities on site from April 15th through October 15th, if screened on three sides from public view.

23. Section 23 requires compost to be maintained and stored to avoid any odor reaching neighbors.

24. Section 24 requires gardens and farms to comply with all other local, state and federal regulations.

Copies of the ordinance may be viewed and purchased at reasonable cost at the Office of the City Clerk in _____ the City Hall, 933 Terrace Street, Muskegon, Michigan, during regular business hours.

This ordinance amendment is effective ten (10) days from the date of this publication.

CITY OF MUSKEGON

Published: _____, 2014

By: _____
Ann Cummings, MMC, Its Clerk

PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE

**City of Muskegon
Muskegon County, Michigan
Ordinance Amendment No. _____**

Rev. 9-30-14

THE CITY OF MUSKEGON HEREBY ORDAINS:

Chapter 34, Article IV of the Code of Ordinances of the City of Muskegon, Michigan is amended in its entirety, replacing sections 34-101 through 34-115 with the following:

Sec. 34-101. Purpose and Intent.

It is the intent of this ordinance to give effect to the intent of Initiated Act 1 of 2008, MCL 333.26421, et seq, (the Act) as approved by the electors, and not to determine and establish an altered policy with regard to marihuana. The act authorizes a narrow exception to the general rule and state policy that the cultivation, distribution, and use of marihuana amount to criminal acts. It is the further intent of this ordinance to protect the public health, safety, and general welfare of persons and property, and to issue licenses. It is the further intent of this ordinance to comply with the Act while concurrently attempting to protect the health, safety, and welfare of law enforcement officers and other persons in the community, and also to address and minimize reasonably anticipated secondary effects upon children, other members of the public, and upon significant areas of the community, that would be reasonably expected to occur in the absence of the provisions of this ordinance. This ordinance is designed to recognize the fundamental intent of the Act to allow the creation and maintenance of a private and confidential patient-caregiver relationship to facilitate the statutory authorization for the limited cultivation, distribution, and use of marihuana for medical purposes; and to regulate around this fundamental intent in a manner that does not conflict with the Act so as to address issues that would otherwise expose the community and its residents to significant adverse conditions, including the following: adverse and long-term influence on children; substantial serious criminal activity; danger to law enforcement and other members of the public; discouragement and impairment of effective law enforcement with regard to unlawful activity involving the cultivation, distribution, and use of marihuana; the creation of a purportedly lawful commercial enterprise involving the cultivation, distribution and use of marihuana that is not reasonably susceptible of being distinguished from serious criminal enterprise; and, the uninspected installation of unlawful plumbing and electrical facilities that create dangerous health, safety, and fire conditions.

This ordinance permits authorization for activity based on the Act. Nothing in this ordinance shall be construed as allowing persons to engage in conduct that endangers others or causes a public nuisance, or to allow use, cultivation, growth, possession or control of marihuana not in strict accordance with the express authorizations of the Act and this ordinance; and, nothing in this ordinance shall be construed to undermine or provide immunity from federal law as it may be enforced by the federal or state government relative to the cultivation, distribution, or use of marihuana. Thus, the authorization of activity, and the approval of a license under this ordinance shall not have the effect of superseding or nullifying federal law applicable to the

cultivation, use, and possession of marihuana, and all applicants and grantees of licenses are on notice that they may be subject to prosecution and civil penalty, including forfeiture of property.
Sec. 34-102. Definitions.

Act means Initiated Law of 2008, MCL 333.26421, et seq., and Michigan Administrative Rules, R 333.101, et seq.

Department means the State of Michigan Department of Community Health.

Dispensary means one or more primary caregivers growing, storing, delivering, transferring, and/or providing qualifying patients with Medical marihuana out of a building or structure.

Qualifying patient or **patient** means a person as defined under MCL 333.26423(h) of the Act, who has been issued and possesses a Registry Identification Card under the Act.

Primary caregiver or **caregiver** means a person as defined under MCL 333.26423(g) of the Act, and who has been issued and possesses a Registry Identification Card under the Act.

Registry Identification Card means the document defined under MCL 333.26423(i) of the Act.

Distribution means the physical transfer of any amount of marihuana in any form by one person to any other person or persons, whether or not any consideration is paid or received.

Distributor means a primary caregiver who engages in any one or more acts of Distribution.

Facility or **Premises** means a commercial business having a separate or independent postal address, one private office having a separate or independent postal address, one single family residence having a separate or independent postal address, one apartment unit having a separate or independent postal address, one condominium unit having a separate or independent postal address, or one free-standing industrial building having a separate or independent postal address.

Medical Marihuana Home Cultivation Operation means the cultivation of marihuana by a registered patient within a single family dwelling that is the registered patient's primary residence and which cultivation is in conformity with the restrictions and regulation contained in the Act.

Marihuana means the substance or material defined in section 7106 of the public health code, 1976 PA 368, MCL 333.7106.

Principal residence means the place where a person resides more than half of the calendar year.

Sec. 34-103. Licensure requirements.

- (1) The cultivation of marihuana by a caregiver or any other person permitted under the Act, and the provision of caregiver services relating to medical marihuana use, shall be permitted in accordance with the Act. No cultivation, distribution, and other

assistance to patients shall be lawful in this community at a location unless and until such location for such cultivation, distribution, and assistance shall have been licensed under this ordinance.

(2) The license requirements set forth in this chapter shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state or local law.

(3) Each caregiver operating at a facility or dispensary shall obtain a separate license prior to operating.

(4) The following locations shall require licensure:

- (a) A facility used for the cultivation of marihuana by caregivers or patients permitted under the Act;
- (b) A dispensary or facility used for distribution;
- (c) Any facility used to provide any other assistance to patients by caregivers permitted under the Act relating to medical marihuana;
- (d) A location other than a patient's principal residence where a patient cultivates or uses marihuana exclusively for such patient's personal consumption.
- (e) The principal residence of a patient where marihuana is cultivated exclusively for such patient's personal consumption.

(5) Operating as a primary caregiver is prohibited in a residence.

(6) Any portion of the structure where energy usage and heat exceeds typical residential use, such as a grow room, and the storage of any chemicals such as herbicides, pesticides, and fertilizers shall be subject to inspection and approval by the fire department to insure compliance with the City's adopted International Fire Code.

(7) The premises shall be open for inspection upon request by the City's appointed inspectors, building officials, fire department, and/or law enforcement officials for compliance with all applicable laws and rules, during normal business hours of 9:00 a.m. until 5:00 p.m. or as such other times as anyone is present on the premises.

Sec. 34-104. Application for license.

(1) An application for an annual license or renewal under this section shall be submitted to the City Clerk. A license shall be issued or renewed upon payment of the required fee and submission of a completed application in compliance with the provisions of this article, and compliance with all provisions and requirements of this article.

(2) An application renewal shall be submitted annually. Application to renew a license under this ordinance shall be filed at least 30 days prior to the date of expiration. Such renewal shall be accompanied by the annual fee.

(3) An application shall include the names of all caregivers operating in the same facility or on the same premises, with proof of registration, including current Registry Identification Card, pursuant to the Act.

(4) Pursuant to the Act, primary caregivers shall not have any felony convictions within the past ten years and shall not have ever been convicted of a felony involving illegal drugs or a felony that is an assaultive crime as defined in section 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL 770.9a. If a criminal background check reveals any such felony conviction, no license shall be issued and/or an existing license shall be revoked.

(5) The application shall include the marihuana facility history of the applicant; whether such person has had a business license revoked or suspended, the reason therefore, and the business activity or occupation subsequent to such action of suspension or revocation.

(6) No license shall be issued and/or an existing license may be revoked if applicant or business owes to the City any outstanding back taxes, fines, fees or liens.

(7) Applications shall include the address of the precise premises at which there shall be possession, cultivation, distribution or other assistance in the use of marihuana.

(8) If the premises are rented and not owned by the applicant, the landlord/owner of the premises must sign the application acknowledging that they are aware of the legal growth, storage and/or distribution of medical marihuana on the premises.

(9) Specify the name and address of the place where all unused portions of marihuana plants cultivated in connection with the use of marihuana or caregiver activity at the premises shall be disposed.

(10) Describe the enclosed, locked facility in which any and all cultivation of marihuana is proposed to occur, or where marihuana is stored, with such description including: location in building, precise measurements in feet, of the floor dimensions and height; the security device for the facility; and in the case of facilities with more than one primary caregiver, the name of the single primary caregiver designated to solely oversee and have access to each separate enclosed, locked facility.

(11) Describe all locations in the premises where a caregiver or other person authorized under the Act shall render assistance to a qualifying patient.

(12) Specify the number of patients to be assisted by each caregiver, including the number of patients for whom marihuana is proposed to be cultivated, and the number of patients to be otherwise assisted on the premises, and the maximum number of plants to be grown or cultivated at any one time.

(13) For safety and other code inspection purposes, it shall describe and provide detailed specifications of all lights, equipment, and all other electrical, plumbing, and other means proposed to be used to facilitate the cultivation of marihuana plants.

(14) The initial application fee and renewal fees shall be established by special resolution of the City Commission; thereafter they shall be established by annual budget resolution of the City Commission.

(15) In the case of corporations, partnerships, non-profit organizations, or other business types, the applicant shall be the highest level official or employee of the entity such as, board President, Chief Executive Officer, Executive Director, or comparable position.

(16) If the applicant is a corporation, a copy of the articles of incorporation and current corporation records disclosing the identity and residential addresses of all directors, officers, and shareholders shall be included. Include the address of the corporation itself, if different from the address of the marihuana dispensary or growing/manufacturing facility and the name and address of the resident agent for the corporation.

(17) If the applicant is a partnership, the names and residence address of each of the partners and the partnership itself, if different from the address of the marihuana dispensary or growing/manufacturing facility, and the name and address of the resident agent.

Sec. 34-105. Number of Marihuana Plants.

(1) In a patient's principal residence, there shall be not more than twelve marihuana plants per licensed patient being cultivated at any one time.

(2) At a facility at which a caregiver cultivates marihuana for use by patients, there shall not be more than twelve marihuana plants being cultivated at any one time per

patient, and in no event more than seventy-two marihuana plants being cultivated at any one time per caregiver (which assumes cultivation for five patients, plus an additional twelve plants if the caregiver is also a patient that has not designated a caregiver to assist in providing medical marihuana).

Sec. 34-106. Locations

(1) Dispensaries used by a primary caregiver are permitted in the following zoning districts: B-2, B-3, B-4, B-5, MC, I-1 and I-2.

(2) No dispensary may be located within 1,000 feet of a preschool, elementary school, middle school or high school. Measurements for purposes of this section shall be made from property boundary to property boundary.

Sec. 34-107. No Signs or Advertising.

(1) The distribution of marihuana is generally unlawful, and the Act does not authorize any activity such as a “dispensary.” Reading the Act as a whole, the activities of caregivers are interpreted as being limited to private and confidential endeavors. Moreover, the location and identity of a caregiver may be readily known to his or her patients. Accordingly, there shall be no signage identifying a facility, dispensary or any place where a caregiver is operating.

(2) Unless conducted as part of a related licensed professional medical or pharmaceutical practice, caregiver activity shall not be advertised as a “clinic,” “hospital,” “dispensary,” or other name customarily ascribed to a multi-patient professional practice.

Sec. 34-108. Primary caregiver operations.

The following additional standards shall apply to all primary caregiver operations:

(1) Shall not be operated from a business which sells alcoholic beverages.

(2) The establishment shall be designed, operated, and maintained at all times consistent with responsible business practices and so that no excessive demands shall be placed upon public safety services, nor any excessive risk of harm to the public health, safety, or sanitation, interference with vehicular or pedestrian traffic or parking, or the continuance or maintenance of any unlawful conduct, public nuisance, or disorderly conduct either within the establishment or on or about the adjacent businesses and public streets, alleys, parks, parking facilities, or other areas open to the public. The establishment shall make reasonable effort to report to authorities any unlawful conduct that is observed from the premises.

(3) No drive-through facilities shall be permitted.

(4) All transfers and deliveries of medical marihuana to qualifying patients must occur within the structure out of public view.

(5) The consumption of medical marihuana on the premises is prohibited.

Sec. 34-109. Medical Marihuana Home Cultivation Operation.

In addition to the requirements of home occupations outlined in the City's zoning ordinance, patients who chose to cultivate their own medical marihuana at home shall be subject to the following requirements:

(1) All use of marihuana on the premises shall comply with the Act at all times.

(2) All medical marihuana shall be contained within an enclosed, locked facility inside a primary or accessory building.

(3) All necessary building, electrical, plumbing and mechanical permits shall be obtained for any portion of the building in which electrical wiring, lighting, storage and/or watering devices that support the cultivation, growing or harvesting of marihuana are located.

(4) The City Clerk shall coordinate electrical, fire, mechanical, plumbing inspectors (and any other inspector(s) deemed necessary under the circumstances) with regard to site of such cultivation for the purpose of determining whether all lights, plumbing, equipment, and all other means used to facilitate the cultivation of marihuana plants is in accordance with all applicable codes.

(5) If a room with windows is utilized as a growing location, any lighting methods that exceed usual residential levels between the hours of 11 pm and 7am shall employ shielding methods, without alteration to the exterior of the residence, to prevent ambient light spillage that may create a distraction for adjacent residential properties or vehicles on adjacent right of ways.

Sec. 34-110. Use of land in accordance with approved application.

(1) If approved, all use of property shall be in accordance with an approved license application, including all information and specifications submitted by the applicant in reliance on which the application shall be deemed to have been approved.

(2) Any facility that exists on the effective date of this ordinance shall cease operations and may make application for and receive approval to continue to operate.

Sec. 34-111. No Vested Rights

A property owner shall not have vested rights or nonconforming use rights that would serve as a basis for failing to comply with this ordinance or any amendment of this ordinance.

Sec. 34-112. Effect of license; suspension; penalties; daily violation.

(1) A license is valid only for the location identified on the license and cannot be transferred to another location within the city without a new application.

(2) A license does not prohibit prosecution by the federal government of its laws or prosecution by state authorities for violations of the Act or other violations not protected by the Act.

(3) Compliance with city ordinances and state statutes is a condition of maintenance of a license and a license may be suspended for cause pursuant to the provisions of this chapter.

(4) Suspension of a license is not an exclusive remedy and nothing contained herein is intended to limit the city's ability to prosecute code violations that may have been the cause of the suspension or any other code violations not protected by the Act.

(5) Each day that a person shall conduct a primary caregiver operation or Medical Marihuana Home Cultivation Operation without a license or allow, operate, or assist in said operation shall constitute a separate offense.

(6) A violation of any section of this article is a civil infraction.

Sec. 34-113. Non-renewal revocation.

The City Clerk may choose to not renew or to revoke a license based on any of the following:

(1) A failure to meet the conditions or maintain compliance with the standards established by this division in reference to applications for a new license or the renewal of an existing license; or

(2) One or more violations of any city ordinance, state or federal law or regulation, on the premises; or

(3) Maintenance of a nuisance on the premises; or

- (4) A demonstrated history of excessive calls for public safety.
- (5) Nonpayment of real and/or personal property taxes, fines, fees or liens owed to the City; or
- (6) Failure to comply with any City adopted building or fire codes.

Sec. 34-114. Appeals Process

If an applicant or licensee chooses to appeal denial of a license or revocation of a license, the applicant or licensee can enter in a written appeal to the City Clerk's office using a city generated form including the appellants signature, the requirement or decision from which the appeal is made, and shall state the specific grounds on which the appeal is based. Appeals shall be filed within 30 days of the decision in question. City Commission shall consider the appeal within 30 days of the receipt of the appeal.

Sec. 34-115. Severability

If any clause, sentence, section, paragraph, or part of this ordinance, or the application thereof to any person, firm, corporation, legal entity, or circumstances, shall be for any reason adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not effect, impair, or invalidate the remainder of this ordinance and the application of such provision to other persons, firms, corporation, legal entities, or circumstances by such shall be confined in its operation to the clause, sentence, section, paragraph, or part of this ordinance thereof directly involved in the case or controversy in which such judgment shall have been rendered and to the person, firm, corporation, legal entity, or circumstances then and there involved. It is hereby declared to the legislative intent of this body that the ordinance would have been adopted had such invalid or unconstitutional provisions have not been included in this ordinance.

Sec. 34-116. Prohibition against “provisioning centers” and “safety compliance facilities”

It is unlawful for any individual or commercial entity to acquire, possess, manufacture, deliver, transfer or transport, sell, supply, or provide marihuana – whether medical or otherwise – to any individual or group of individuals, whether or not such person(s) has/have not become registered as qualifying patient(s) or registered primary caregiver(s) pursuant to the Michigan Medical Marihuana Act, MCL 333.26421, et seq. (the “Act”), unless explicitly permitted by the Act or explicitly permitted by this ordinance. “Provisioning Centers” and “Safety Compliance Facility” contemplated by the House Bill 4271 of 2014, are prohibited.